

United States District Court
EASTERN DISTRICT OF NEW YORK

-----X Case No. 07 Civ. 2164(SLT)

SCOTT ERATH, BRUCE DEL TURCO, PATRICIA WIGGLESWORTH, CHARLES HILL, JAMES BARTALONE, and RON ADE, as Trustee and Fiduciaries of the LOCAL 7 TILE INDUSTRY WELFARE FUND, LOCAL 7 TILE INDUSTRY ANNUITY FUND, BRUCE DEL TURCO, SCOTT ERATH, JAMES BARTALONE, AND THOMAS LANE, as Trustees and Fiduciaries of the TILE LAYERS LOCAL UNION 52 PENSION FUND, JOHN J. FLYNN, KENNETH LAMBERT, JAMES BOLAND, GERALD O'MALLEY, JOSEPH BRAMLETT, PAUL SONGETR, CHARLES VERLARDO, EUGENE GEORGE, MATTHEW AQUILINE, GERALD SCARANO, MICHAEL SCHMERBECK, BEN CAPP, GREGORY HESS, and VINCENT DELAZERRO, as Trustees and Fiduciaries of the BRICKLAYERS & TROWEL TRADES INTERNATIONAL PENSION, HEALTH AND ANNUITY FUNDS, and CHARLES HILL, as President of TILE, MARBLE & TERRAZZO LOCAL NO. 7 OF N.Y.& N.J., BAC,

ANSWER TO COMPLAINT

Plaintiffs,

-against-

PRIDE CARPET, INC. and ROBERT P. FRANGO,

Defendants.

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Comes now Defendants, PRIDE CARPET, INC. and ROBERT P. FRANGO, by their attorneys, Shanker Law Group, answering the complaint herein upon information and belief:

- 1) Lacks sufficient information or knowledge as to form a belief as to each and every allegation contained in paragraphs "1", "2", "3", "4", "5", "8", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "25", "27", "28", "30", "31", "33", "35", "36", "38", "40", "42", "43", "45", "47", "48", "50", "51", "53", "55", "56", "58", "60", "61", "62", "63", "65", "66", "67", "68", "70", "71", "73", "74", "76", "77", "79", "81", "82", "84", "86", "87", "89", "91", "92", "93", "95", "96", "97",

“98”, “99”, “100”, “101”, “103”, “104”, “105”, “107”, “108”, “109”, “110”, “111”, “112”, “114”, “115”, “116”, “117”, “118”, and “119” of Plaintiffs’ Complaint and therefore denies the same and leaves Plaintiff to its proofs.

- 2) Admits each and every allegation contained in paragraphs “6” of plaintiffs’ Complaint.
- 3) Denies each and every allegation contained in paragraphs “7”, “21”, “23” “26”, “32”, “37”, “41” “46”, “52”, “57”, “78”, “83”, and “88” of plaintiffs’ Complaint.
- 4) Denies each and every allegation contained in paragraphs “9” and “10” of plaintiffs’ Complaint except admit that a limited collective bargaining agreement was executed by and between Pride Carpet and Union.
- 5) Repeats, reiterates and realleges each and every allegation in response to paragraphs “19”, “24”, “29”, “34”, “39”, “44”, “49”, “54”, “59”, “64”, “69”, “72”, “75”, “80”, “85”, “90”, “94”, “102”, “106”, and “113” of plaintiffs’ Complaint as though set forth more fully herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

- 6) Plaintiff has failed to perform a proper audit which would result in a proper assessment and a reduction in the amount owed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

- 7) The plaintiff has failed to state a claim upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

- 8) Improper calculation.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

- 9) Overpayment.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

- 10) Premiums charged on improper items.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

- 11) Set-off.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

- 12) That if any losses/damages were caused to the plaintiffs, at the time and place stated in the complaint, then it is alleged that such losses/damages were brought about and caused in whole or in part by the culpable conduct of the plaintiffs, by their representatives, agents, servants and/or employees, herein, and that any recovery for such damage shall be determined in the proportion which the culpable conduct attributable to the plaintiffs bear to the culpable conduct which caused the losses/damages.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

- 13) Estoppel.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

- 14) Payment.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

- 15) Defendants complied with each and every obligation owed to plaintiff.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

- 16) Plaintiffs have failed to properly credit defendants by adjusting the amount to be paid.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

- 17) Plaintiffs have named an improper party.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

18) Plaintiffs seek contributions for non-union labor.

WHEREFORE, defendants respectfully request that this Court issue an Order:

- a. dismissing the plaintiffs' Complaint;
- b. all together with such other, different and further relief as to this Court may seem just and proper.

Dated: Mineola, New York
July 30, 2007

Respectfully submitted,

Michael L. Shanker (MLS-2138)



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**AFFIRMATION OF
SERVICE**

Plaintiffs,

-against-

PRIDE CARPET, INC. and ROBERT P. FRANGO,

Defendants.

-----X

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

I, Michael L. Shanker, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under penalty of perjury that the following facts are true:

On July 30, 2007, I served the within Answer via first-class mail, by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to plaintiffs' attorneys BARNES, IACCARINO, VIRGINIA, AMBINDER & SHEPHERD, PLLC, 111 Broadway, Suite 1403, New York, New York 10006.

Dated: Mineola, New York
July 30, 2007

-----Michael L. Shanker (MLS-2138)